

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

CA Writ 45/2008

K.U. De Silva
No: 15,
Kandewela Lane,
Viharagoda,
Wathugedara.

And 12 others

Petitioners

Vs.

H.P.S. Somasiri
Director General
Department of Irrigation
Bouddhaloka Mw.
Colombo 07.

And 12 others

Respondents

Before : K.T. Chitrasiri, J. &
L.T.B. Dehideniya, J.

Counsel : J.C. Weliamuna with Lilanthi De Silva for the petitioner.
Milinda Gunatilake DSG for the 1st – 13th respondents.
M. Nizam Kariapper with M.I.M. Iynullah for the 14th &
15th added respondents.

Decided on : 12.08.2015

K.T. Chitrasiri, J.

Learned Deputy Solicitor General submits that this application would become futile since the posts that the petitioners have applied for have now been abolished by the letter dated 08.01.2013. It had been issued upon a decision made by the Director General of the Department of Management Services in the Ministry of Finance & Planning. Accordingly, he submits that it is now futile to issue a mandate in the nature of a writ of mandamus as sought in the prayer to the petition.

Mr. Weliamuna submits that if the Court is satisfied with the fact that the relevant positions/posts that the petitioners have applied for, have now been suppressed, then it may not serve any purpose in proceeding with this application.

Accordingly, we consider the submissions made by the learned Deputy Solicitor General. In respect of this issue, respondents have filed the motion dated 11.06.2014 together with the documents marked annex 1 for the consideration of this Court. The document so marked is the letter dated 08.01.2013 referred to above. It is a letter issued by the Director General of the Department of Management Services in the Ministry of Finance & Planning. In that letter, it is mentioned that the posts referred to in the annexure 1 have been abolished.

In that annexure I, the post of work supervisor whom the petitioners were interested, also is appearing in item 63 found therein. The relief (f) prayed for by the petitioner is to have a writ of mandamus issued, directing the respondents to proceed with the recruitment process to the posts of work supervisor class II(B) in the SLTS in terms of the Gazette Notification P 16.

Having perused the letter dated 08.01.2013 and the annexure 1 thereto, it is clear that the positions that the petitioners were interested and wanted to have the recruitment process proceeded with, have now been abolished.

Under those circumstances, it is clear that the issue of a writ of mandamus as prayed for in the petition would certainly become futile. In the event, the issuance of a writ is futile then a writ of mandamus would not lie. This position of law is clearly seen in the cases including that of P.S. Bus Co. Ltd. V. Ceylon Transport Board (61 NLR 491) Samarasinghe V. De Mel (1982(1) SLR 123), Pathirana V. Victor Perera (2006(2) SLR 281) Center for Policy Alternatives V Dayananda Dissanayake (2003(1) SLR 277).

Having considered this position of law and the facts of this case referred to above, this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-